

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	File No. EB-06-SE-086
)	NAL/Acct. No. 200732100013
Wal-Mart Stores, Inc.)	FRN # 0008627473

ORDER

Adopted: February 28, 2007**Released: March 1, 2007**

By the Chief, Enforcement Bureau:

1. In this *Order*, we adopt the attached Consent Decree entered into between the Enforcement Bureau and Wal-Mart Stores, Inc. ("Wal-Mart"). The Consent Decree terminates an investigation initiated by the Enforcement Bureau regarding whether Wal-Mart violated Section 301 of the Communications Act of 1934, as amended ("Act"),¹ and Sections 25.102(a) and 25.117(a) of the Commission's Rules ("Rules")² by modifying its satellite earth station facilities without authorization and operating these facilities at variance from the terms of the authorizations.

2. The Enforcement Bureau and Wal-Mart have negotiated the terms of a Consent Decree that resolves this matter and terminates the investigation. A copy of the Consent Decree is attached hereto and incorporated by reference.

3. After reviewing the terms of the Consent Decree, we find that the public interest would be served by adopting the Consent Decree and terminating the investigation. In the absence of material new evidence relating to this matter, we conclude that our investigation raises no substantial or material questions of fact as to whether Wal-Mart possesses the basic qualifications, including character qualifications, to remain a Commission licensee.

4. Accordingly, **IT IS ORDERED**, pursuant to Section 4(i) of the Act,³ and the authority delegated by Sections 0.111 and 0.311 of the Rules,⁴ that the attached Consent Decree **IS ADOPTED**.

5. **IT IS FURTHER ORDERED** that the above-captioned investigation into the matters described herein **IS TERMINATED**.

6. **IT IS FURTHER ORDERED** that Wal-Mart shall make its voluntary contribution to the United States Treasury, as specified in the Consent Decree, by credit card through the Commission's

¹ 47 U.S.C. § 301.

² 47 C.F.R. §§ 25.102, 25.117.

³ 47 U.S.C. § 154(i).

⁴ 47 C.F.R. §§ 0.111, 0.311.

Debt and Credit Management Center at (202) 418-1995, or by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Federal Communications Commission, P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank/LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6106.

7. **IT IS FURTHER ORDERED** that copies of this *Order* and Consent Decree shall be sent by first class mail and certified mail, return receipt requested, to Ms. Nancy Stewart, Senior VP, CTO, Information Systems Division, Wal-Mart Stores, Inc., 702 Southwest Eighth Street, Bentonville, Arkansas 72716, and to Mr. C. Douglas Jarrett, Esq., Keller and Heckman LLP, Suite 500 West, 1001 G Street, N.W., Washington, D.C. 20001.

FEDERAL COMMUNICATIONS COMMISSION

Kris Anne Monteith
Chief, Enforcement Bureau

CONSENT DECREE

The Enforcement Bureau (“Bureau”) of the Federal Communications Commission (“Commission”) and Wal-Mart Stores, Inc. (“Wal-Mart”) hereby enter into this Consent Decree for the purpose of terminating the Bureau’s investigation into whether Wal-Mart violated Section 301 of the Communications Act of 1934, as amended (“Act”),¹ and Sections 25.102(a) and 25.117(a) of the Commission’s Rules (“Rules”)² by modifying its satellite earth station facilities without authorization and operating these facilities at variance from the terms of the authorizations.

I. BACKGROUND

1. Section 301 of the Act prohibits a person from using or operating any apparatus for the transmission of energy or communications or signals by radio except under and in accordance with the Act and with a license granted in accordance with the Act. Similarly, under Section 25.102(a) of the Rules, no person may use or operate any apparatus for the transmission of energy or communications or signals by space or earth stations except under, and in accordance with, an appropriate authorization granted by the Commission. Pursuant to Section 25.117(a) of the Rules, no modification of a radio station governed by Part 25 of the Rules may be made that affects the parameters or terms and conditions of the station authorization, except upon application to and grant of such application by the Commission.

2. Wal-Mart filed a Request for Special Temporary Authority (“STA”) with the Commission on February 21, 2006 to operate its domestic satellite earth station facilities as modified, but not authorized under its satellite earth station licenses.³ The International Bureau granted the STA on March 3, 2006.⁴ Pursuant to an application for permanent authority to modify and consolidate these licenses submitted on April 5, 2006, the International Bureau granted modified authority on June 2, 2006 consolidating Wal-Mart’s five earth station licenses into Station E940457.⁵ The International Bureau granted a modified, consolidated license on July 17, 2006, authorizing Wal-Mart to transmit on three sub meter earth stations.⁶

3. The Enforcement Bureau issued a Letter of Inquiry to Wal-Mart’s outside counsel on June 8, 2006 seeking information on Wal-Mart’s domestic satellite earth station facilities,⁷ and Wal-Mart responded to the letter on July 20, 2006.⁸

¹ 47 U.S.C. § 301.

² 47 C.F.R. §§ 25.102(a), 25.117(a).

³ At the time, Wal-Mart operated its domestic satellite earth station facilities pursuant to five authorizations: E850548 (the Primary Hub Antenna); E940457 (the Secondary Hub Antenna); and E850542, E850545, and E850546 (the Remote Terminals).

⁴ See Grant of Authority for Application for Earth Station Special Temporary Authority, File No. SES-STA-20060221-00274. On April 26, 2006, the International Bureau extended the STA until June 29, 2006; see File No. SES-STA-20060418-00686.

⁵ File No. SES-MOD-20060407-00593.

⁶ File No. SES-MOD-20060518-00847.

⁷ Letter from Kathryn Berthot, Deputy Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission to C. Douglas Jarrett, Esq., Counsel to Wal-Mart Stores, Inc. (June 8, 2006).

⁸ Letter from C. Douglas Jarrett, Esq., Counsel to Wal-Mart Stores, Inc., to Katherine Power, Esq., Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission (July 20, 2006).

II. DEFINITIONS

4. For the purposes of this Consent Decree the following definitions shall apply:
- (a) "Act" means the Communications Act of 1934, as amended;
 - (b) "Adopting Order" means an order of the Commission adopting the terms and conditions of this Consent Decree, in the form attached hereto;
 - (c) "Bureau" means the Enforcement Bureau of the Federal Communications Commission;
 - (d) "Commission" or "FCC" means the Federal Communications Commission;
 - (e) "Effective Date" means the date the Adopting Order is released by the Commission;
 - (f) "Investigation" means the investigation commenced by the Bureau's June 8, 2006 letter to Wal-Mart's counsel;
 - (g) "Parties" means Wal-Mart and the Bureau;
 - (h) "Rules" means the Commission's Rules found in Title 47 of the Code of Federal Regulations; and
 - (i) "Wal-Mart" means Wal-Mart Stores, Inc.

III. TERMS OF SETTLEMENT

5. The Parties agree that the provisions of this Consent Decree shall be subject to final approval by the Bureau by incorporation of such provisions by reference in the Adopting Order.

6. The Parties agree that this Consent Decree does not constitute either an adjudication on the merits or a factual or legal finding or determination of any compliance or noncompliance with the Act or the Commission's Rules and orders. The Parties further agree that this Consent Decree is for settlement purposes only and that by agreeing to the Consent Decree, Wal-Mart does not admit or deny any liability for violating the Act or the Rules in connection with the matters that are the subject of this Consent Decree.

7. The Parties agree that this Consent Decree shall become binding on the Parties on the Effective Date. Upon release, the Adopting Order and this Consent Decree shall have the same force and effect as any other final order of the Commission and any violation of the terms or conditions of this Consent Decree shall constitute a violation of a Commission order.

8. The Parties acknowledge and agree that this Consent Decree shall constitute a final and binding settlement between Wal-Mart and the Bureau regarding possible violations of the Act and the Rules with respect to the modifications to earth station facilities made prior to the Effective Date of this Consent Decree. In express reliance on the covenants and representations contained herein, and in order to avoid the potential expenditure of additional public resources, the Bureau agrees to terminate the Investigation.

9. In consideration for termination of the Investigation by the Bureau and in accordance with the terms of this Consent Decree, Wal-Mart agrees to the terms set forth herein.

10. Wal-Mart acknowledges that the Bureau has jurisdiction over the matters contained in this Consent Decree and the authority to enter into and adopt this Consent Decree.

11. Wal-Mart agrees that, as of the Effective Date of this Consent Decree, it will fully comply with the Rules concerning the licensing and operation of earth station facilities and all other applicable provisions of the Act and the Rules with respect to its satellite earth station facilities.

Consistent with this commitment, Wal-Mart has developed satellite earth station regulatory compliance procedures, as summarized below:

- (a) Satellite Earth Station Regulatory Compliance Procedures. Wal-Mart has implemented Satellite Earth Station Regulatory Compliance Procedures (“Procedures”) to ensure that its satellite earth station facilities are operated consistent with the licenses granted by the FCC and applicable FCC rules and policies. As plans for changes or modifications to the Company’s satellite earth station facilities are finalized, Wal-Mart promptly determines whether its current satellite earth station licenses (i) permit the proposed changes, or (ii) whether an application for new or modified authority or a notice must be submitted to the FCC.
- (b) Training and Responsibilities of Wal-Mart Associates. The Procedures describe the training and roles of associates within Wal-Mart’s Satellite Network Engineering Group of the Information Systems Division (“ISD”); Licensing Department (“Licensing”); and Legal Department (“Legal”), all of which share responsibility to assess the impact of proposed changes to Wal-Mart’s satellite earth station facilities, determine whether an application to modify, a notice of minor modification or an application for a new license must be filed with the FCC, and to ensure the filings are prepared and submitted.
- (c) Licensing Recommendation Review and Filings. ISD is responsible for developing a Licensing Recommendation, based on discussions with Wal-Mart’s principal satellite technology vendor. This recommendation is submitted to Licensing and Legal. Reliance on outside consultants and counsel is authorized. As all three groups agree and sign-off on the Licensing Recommendation, the necessary filings with the FCC and frequency coordinators, along with concurrences from adjacent satellite operators, as appropriate, are finalized and submitted. Wal-Mart associates or contractors may modify the licensed parameters of the existing earth station facilities or operate new facilities only after authority is granted by or the required notice is filed with the FCC.
- (d) Scheduled Meetings. The Procedures also call for at least two scheduled meetings per year. One meeting shall involve ISD associates and representatives of Wal-Mart’s principal satellite technology vendor. Its purpose is to review and confirm that Wal-Mart’s satellite earth station facilities continue to be operated consistent with Wal-Mart’s satellite earth station authorizations and, to the extent necessary, applications for modification or notices for any proposed operational changes and additional facilities are submitted and granted by the Commission prior to implementation. The second scheduled meeting shall include responsible Wal-Mart associates from ISD, Licensing and Legal. The purpose of this meeting is to review planned or potential changes to Wal-Mart’s satellite earth station facilities, the status of on-going network changes, pending applications, and changes in FCC rules and policies related to operation of satellite earth station facilities in the United States.

12. The Parties acknowledge that this Consent Decree shall constitute a final and binding settlement between Wal-Mart and the Bureau regarding possible violations of Section 301 of the Act and Sections 25.102(a) and 25.117(a) of the Rules that were the subject of the Investigation.

13. The Bureau agrees that, in the absence of new material evidence, it will not entertain or institute, or use the facts developed in this Investigation or the existence of this Consent Decree to institute, on its own motion, any new proceeding, formal or informal, or take any action on its own motion, or recommend to the full Commission any forfeiture or other sanction, against Wal-Mart for any alleged violation of the Act or the Rules with respect to the modifications to satellite earth station facilities made prior to the Effective Date of this Consent Decree. The Bureau further agrees that, in the absence of new material evidence, it will not use the facts developed in the Investigation through the

effective date to initiate on its own motion, or recommend to the Commission, any proceeding, formal or informal, or take any action against Wal-Mart with respect to Wal-Mart's basic qualifications to hold Commission licenses or authorizations.

14. The Parties agree that each is required to comply with each individual condition of this Consent Decree. Each specific condition is a separate condition of the Consent Decree as approved. To the extent that Wal-Mart fails to satisfy any condition, in the absence of Commission alteration of the condition, it will be deemed noncompliant and may be subject to possible future enforcement action with respect to such failure to satisfy the condition.

15. The Parties also agree that any provision of this Consent Decree which conflicts with any subsequent rule, order of general applicability or other decision of general applicability adopted by the Commission will be superseded by such Commission rule, order or other decision.

16. Wal-Mart agrees to make a voluntary contribution to the United States Treasury in the amount of thirty-two thousand dollars (\$32,000) within thirty (30) calendar days after the Effective Date. Such contribution shall be made, without further protest or recourse, by credit card through the Commission's Debt and Credit Management Center at (202) 418-1995, or by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Federal Communications Commission, P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank /LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6106. The payment must include NAL/Acct No. 200732100013 and FRN No. 0008627473.

17. Wal-Mart's decision to enter into this Consent Decree is expressly contingent upon the Bureau's issuance of an Adopting Order that is consistent with this Consent Decree, and which adopts the Consent Decree without change, addition, modification, or deletion.

18. The Parties waive any and all rights they may have to seek administrative or judicial reconsideration, review, appeal or stay, or to otherwise challenge or contest the validity of this Consent Decree and Adopting Order, provided that the Adopting Order adopts the Consent Decree without change, addition, modification, or deletion.

19. In the event that any court of competent jurisdiction renders this Consent Decree invalid, this Consent Decree shall become null and void and may not be used in any manner in any legal proceeding.

20. If either Party (or the United States on behalf of the Commission) brings a judicial action to enforce the terms of the Adopting Order, neither Wal-Mart nor the Commission shall contest the continuing validity of the Consent Decree or Adopting Order. The Parties agree to comply with, defend and support the validity of this Consent Decree and the Adopting Order in any proceeding seeking to nullify, void or otherwise modify the Consent Decree or the Adopting Order.

21. Wal-Mart waives any rights it may have under any provision of the Equal Access to Justice Act, 5 U.S.C. § 504 and 47 C.F.R. § 1.1501 *et seq.*, relating to the matters addressed in this Consent Decree.

22. The Parties agree that the requirements of this Consent Decree shall expire twenty-four (24) months from the Effective Date.

23. This Consent Decree cannot be modified without the advance written consent of all of the Parties. This Consent Decree may be signed in counterparts.

For the Enforcement Bureau:

By:

Kris Anne Monteith
Chief, Enforcement Bureau

Date

For Wal-Mart Stores, Inc.:

By:

Nancy Stewart
Senior Vice President
CTO, Information Systems Division

Date